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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

PUBLIC GUARDIAN OF SAN  
FRANCISCO,

Petitioner and Respondent,

v.

PATRICIA HEWLETT,

Objector and Appellant.

A151754

(San Francisco County  
Super. Ct. No. PCN-17-300709)

Patricia Hewlett appeals from an order of the probate court appointing the San Francisco Public Guardian the conservator of the person and estate of Henry Joseph Solorzano. Doing so, Hewlett has filed briefs that fail to address, much less overcome, two fundamental appellate principles of appellate review: (1) that a judgment or order of a lower court is presumed to be correct, and all intendments and presumptions are indulged in favor of its correctness, and (2) that Hewlett must affirmatively show error by an adequate record. Not only that, the order was proper and we affirm it.

**INTRODUCTION**

By order of June 1, 2017, the Probate Court appointed the Public Guardian the conservator of Solorzano. Hewlett, who describes herself as Solorzano’s “caregiver, personal assistant and . . . friend,”<sup>1</sup> seeks reversal of that order, the introduction to her

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<sup>1</sup> Hewlett begins her claimed “procedural history” with the assertion that in January 2013, she “now 58 years of age, became caregiver, personal assistant and friend

brief explaining the basis of her claimed reasons why: Solorzano “is not gravely disabled from any source including but not limited to any mental disorder, alcoholism or other reason. [Citation.] [¶] Moreover, Mr. Solorzano, a competent person, never consented to any conservatorship on him. [Citation.] He stated unequivocally in open . . . court that he did not consent to conservatorship. [Citation.] He wants to be free to direct his own medical treatment and diet that reflects his own best interests and values rather than have Respondent continue to interfere with his mental and physical health.”

In claimed support of her appeal, Hewlett has filed a 40-page Opening Brief, 29 pages of which Hewlett asserts are the “Summary of Material Facts.” Most of these claimed “facts” have no record reference, and those that do are general references to “CT 156-173,” apparently referring to the Clerk’s Transcript in another appeal (No. A153430.) Moreover, Hewlett’s statement of facts refers to things supposedly occurring as early as 2008, referring, for example, to claimed conduct of Solorzano’s “then wife”; a \$100,000 life insurance policy on his wife; and various and sundry facts having nothing to do with the issue before us. And perhaps worst of all, Hewlett’s briefs are filled with inappropriate vituperation and comment, illustrated by Hewlett’s reply brief which, after describing Solorzano as having been “kidnapped from his happy home,” says this on the next page: “May Almighty YHWH Elohim of Yisrael have mercy in advance on those responsible for Respondent’s embarrassing display of skullduggery and hopefully nothing worse befalls Henry Joseph Solorzano as a result of Respondent erroneously insisting on maintaining or worsening the status quo.” Hewlett’s briefs are manifestly inappropriate.

The salient facts are these:

On March 9, 2017—acting, according to the Public Guardian’s brief, to protect Solorzano “from continued alleged neglect and elder financial abuse” by Hewlett the

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of current kidnap victim . . . Solorzano who became 97 years young on January 19, 2019.”

Public Guardian issued a Certificate of Authorization pursuant to Probate Code, section 2901.<sup>2</sup>

On March 17, the Public Guardian filed a Petition for Appointment of Temporary Conservator and Petition for Appointment of Probate Conservator. That same day the Public Guardian filed the Confidential Memorandum.

On March 20, the probate court appointed counsel for Solorzano, specifically Franchesca Callejo, Esq.

On March 27, the Public Guardian filed a Citation, followed the next day by “Supplemental Information (Confidential).”

On March 29, Hewlett filed opposition/objection to Petition for Appointment of Temporary Conservator.

On March 29, the probate court appointed the Public Guardian as the temporary conservator of the person and estate of Solorzano, and letters were issued and filed that day.

On April 26, Hewlett filed a Petition to Terminate Conservatorship, set for hearing on June 8.

On May 9, more “Supplemental Information (Confidential)” was filed by the Public Guardian, followed two days later by the “Initial Investigation Report (Confidential).”<sup>3</sup>

On May 15, the probate court ordered Hewlett’s Petition to Terminate Conservatorship filed on April 26 stricken.

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<sup>2</sup> All undesignated statutory references are to this code.

<sup>3</sup> Section 2910 provides in pertinent part as follows: “(a) Upon a showing of probable cause to believe that a person is in substantial danger of abuse or neglect and needs a conservator of the person, the estate, or the person and estate for his or her own protection, the public guardian or the county’s adult protective services agency may petition for either or both of the orders of the court provided in subdivision (b) in connection with his or her investigation to determine whether a petition for the appointment of the public guardian as conservator of the person, estate, or the person and estate of the person would be necessary or appropriate.”

The next day, May 16, a Petition to Terminate Conservatorship was filed by Regulo Sierra.<sup>4</sup>

On May 24, a supplemental “Investigation Report (Confidential)” was filed.

On June 1, the probate court issued an Order Appointing Probate Conservator, appointing the Public Guardian as the conservator of the person and estate of Solorzano. The Order provided that the conservator had the authority to control contact between Hewlett and Solorzano, and also suspended any and all durable powers of attorney to Hewlett or any other person.

On June 8, Hewlett filed a notice of appeal, naming Solorzano as appellant. Hewlett had no authority to file an appeal on behalf of Solorzano, and by order of January 16, 2018 we ordered the appeal dismissed as to her. Meanwhile, on November 9, 2017, we issued an order substituting Hewlett in as objector and appellant. And according to the Public Guardian the conservatorship has been stayed since the appeal was filed.

Attached to Hewlett’s Notice Designating Record on Appeal were various documents, one of which appears to be a one-page minute order, which page contains the following entry, referring to Solorzano as “Henry,” Hewlett as “Patricia,” and Ms. Shomer, the attorney for the Public Guardian: “Ms. Callejo reported that Henry is a delightful man when he is not bombarded with information about these proceedings, that she has received a number of phone calls that are initiated by Patricia and that she coaches him on what to say, that Henry is under Patricia’s control, that he believes everything she says and that she has cut his social contact. Patricia has stated that she has know [*sic*] Henry for many years, that she has never met any of his daughters, that she takes care of Henry, that he is in perfect health and that he has excellent memory, that his money was spent on upgrades to the house, that she helps him and that he helps her and they love each other. Furthermore Patricia stated that it is Henry’s financial advisor that makes the withdrawals not her and spoke about the incident that occurred this morning at

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<sup>4</sup> Sierra’s Petition to Terminate Conservatorship was denied on July 6.

Henry's home. Ms. Shomer stated that Patricia continues to represent Henry as his attorney even though she has been informed that the power of attorney is suspended, that she is not his assistant and that Patricia is unwilling to step back to allow the public guardian to do its job.

"Ms. Callejo reported that she was informed that Patricia and Henry were supposed to get married, that Patricia is already married, that Henry does not recall authorizing any withdrawals and that he can enjoy is [*sic*] life free from undue influence. Ms. Shomer stated it was stated to her by Emily that Patricia said that the house is hers, Henry left it to her, that the daughter isn't going to get anything and that rent checks have gone missing. Patricia argued that Ms. Shomer has no medical records to prove this petition and that she has been unable to read the confidential documents listed on the register of actions. The Court informed Patricia that she has no right to access those confidential documents and reminded her only to speak about herself and not for Henry. Patricia stated that the rent was paid to Henry directly and that there is a written document that states that she will take care of Henry until he dies dated in 2013. Henry stated that the [*sic*] thanks the Court for listening to him, that he appreciates the Judge and that the Judge has a wonderful voice.

"The Court granted the petition to appoint the San Francisco Public Guardian as conservator of the person and estate of Henry Joseph Solorzano with the requested modified powers (order for the same signed in open court). Ms. Callejo to stay on."

## **DISCUSSION**

### **Hewlett's Appeal Has No Merit**

Hewlett, who, as noted, represented herself in the trial court, continues her self-representation here. That, of course, is her right,<sup>5</sup> but "[a] lay person . . . who exercises the privilege of trying [her] own case must expect and receive the same treatment as if

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<sup>5</sup> At least in this case, where she filed her first pleading in March 2017. However, by order of July 11, 2017, the San Francisco Superior Court declared Hewlett a vexatious litigant. And on March 29, 2019, Division Five of this Court entered an order to the same effect. (See A152360, A153397, 3/29/19.)

represented by an attorney—no different, no better, no worse.” (*Taylor v. Bell* (1971) 21 Cal.App.3d 1002, 1009.) In short, “[p]ro per litigants are held to the same standards as attorneys.” (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543.)

As alluded to earlier, “A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.” (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) “ ‘ A fundamental principle of appellate practice is that an appellant “ ‘must affirmatively show error by an adequate record. . . . Error is never presumed.’ ” ’ ” (*IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 639.) So, Hewlett cannot merely assert that error occurred; she must demonstrate it from the record on appeal. (*Jameson v. Desta* (2018) 5 Cal.5th 594, 608–609.)

This, she has not done. Nor could she.

As indicated above, the probate court had before it several confidential reports as well as the investigation report, all as prescribed by, and in compliance with, the Probate Code. (See section 2900 et seq.) And as indicated from the minute order quoted above, the court heard from various witnesses, including Callejo, not to mention Solorzano and Hewlett. And based on all that, a most experienced probate court judge appointed the Public Guardian as conservator. There was no error.

Hewlett’s brief purports to make five brief arguments, all of which are contained in the last six pages of her brief, three of which— numbers II, III, and IV—are in fact all on one page. The arguments are as follows:

“I. APPELLANT HAS CONSTITUTIONAL STANDING AND AUTHORITY TO SUE ON BEHALF OF HERSELF AND HENRY SOLORZANO TO REDRESS WRONGS COMMITTED BY RESPONDENT IN THIS CASE.

“A. Appellant has standing.

“B. Due process compels an end to crime including kidnapping and thievery in this case.

“II. HENRY SOLORZANO HAS CAPACITY TO PROVIDE INFORMED CONSENT.

“III. COURT VIOLATED DUE PROCESS BY SUSPENDING APPELLANT’S POWER OF ATTORNEY FOR HENRY SOLORZANO.

“IV. COURT VIOLATED DUE PROCESS BY GRANTING TEMPORARY CONSERVATORSHIP TO RESPONDENT FOR HENRY SOLORZANO.

“V. FRANCESCA CALLEJO, ESQ. FAILED TO REPRESENT ZEALOUSLY WITHIN THE BOUNDS OF THE LAW HENRY SOLORZANO’S LEGAL INTERESTS AT THE MARCH 29, 2017 HEARING.”<sup>6</sup>

None of the arguments meets Hewlett’s burden here.

And while not in the table of contents, as quoted above, Hewlett appears to argue that the Order Appointing Probate Conservator should be reversed because Solorzano is not gravely disabled. But “grave disability is not a requirement for establishment of a probate conservatorship,” but only for LPS conservatorships under the Lanterman-Petris-Short Act (California Welfare and Institutions Code, § 5000 et seq). And those are different. (See *People v. Karriker* (2007) 149 Cal.App.4th 763, 779 [Probate Code conservatorship is “less intrusive form of conservatorship” than LPS]; also see *Conservatorship of Roulet* (1979) 23 Cal.3d 219, 235 [noting higher standard of proof].)

The conservatorship here is pursuant to section 1801, subdivisions (a) and (b), providing that a conservator of the person may be appointed for a person who is unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter, and a conservator of the estate may be appointed for a person who is substantially unable to manage his or her own financial resources or resist fraud or undue influence.

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<sup>6</sup> This last argument has four subparts: “Francesca Callejo, Esq.’s comments as written in the mini-minutes prove that she failed to advocate for Henry Solorzano.” “Evyne L. Shomer, Esq.’s comments as written in the mini-minutes prove that she failed to advocate for Respondent.” “The probate court erred when it falsely claimed that Appellant has no right to access confidential documents that are the subject of a subpoena duces tecum properly served on Respondent.” “Discovery should resolve these issues if the Court allows that to proceed than rely on hearsay.”

The Probate Court determined that Solorzano required assistance for management of his person and estate and acted properly to appoint the Public Guardian as the probate conservator of the person and estate.

**DISPOSITION**

The order of June 1 is affirmed. The Public Guardian shall recover its costs on appeal.



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Richman, J.

We concur:

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Kline, P. J.

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Miller, J.

*Public Guardian of San Francisco v. Hewlett* (A151754)